

**IN THE UNITED STATES DISTRICT OF TEXAS  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

United States Courts  
Southern District of Texas  
**FILED**

MAR - 8 2016

**David J. Bradley, Clerk of Court**

## **ROBERT LEE VALENCIA**

*Plaintiff*

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**CIVIL ACTION NO. 2:16cv00085  
JURY TRIAL REQUESTED**

VS.

**UNITED STATES OF AMERICA**

### *Defendants*

## **PLAINTIFFS' ORIGINAL COMPLAINT**

Robert Lee Valencia, Plaintiff, by and through his attorneys, The Law Offices of Thomas J. Henry, now come before this Court and complains of the United States of America, (hereinafter “USA”), as follows:

## I. PARTIES

1. Robert Lee Valencia is an individual residing in Bee County, Texas, and thus a resident of the Southern District of Texas.
  2. The Defendant is the United States of America. The Defendant, the USA, may be served with summons upon Loretta E. Lynch, United States Attorney General, at The Department of Justice, 10<sup>th</sup> and Constitution Avenue, N.W., Washington, D.C., 20530 and the Civil Process Clerk, agent for service of process for the United States Attorney for the Southern District of Texas, at 1000 Louisiana, Suite 2300, Houston, Texas 77002.

## **II. JURISDICTION AND VENUE**

3. The claims herein are brought against the USA pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671 *et seq.* and 28 U.S.C. §1346(b) for money damages as compensation for loss of property and personal injuries that were caused by the negligent and wrongful acts

and omissions of employees of the USA while acting within the course and scope of their offices and employment, under circumstances where the United States, if a private person, would be liable to the Plaintiff in accordance with the laws of the State of Texas.

4. Venue is proper under 28 U.S.C. §1391(b)(2) in that all, or a substantial part, of the acts and omissions forming the basis of this suit occurred in Bee County, Texas, which is within the Southern District of Texas – Corpus Christi Division.
5. Plaintiff requests a trial by jury.

### **III. CONDITIONS PRECEDENT**

6. Plaintiffs have fully complied with the provisions of 28 U.S.C. §2675 of the Federal Tort Claims Act.
7. This suit has been timely filed, in that Plaintiffs timely served notice of their claims on the appropriate Federal Agency.
8. The appropriate Federal Agency made a final disposition of Plaintiffs' claims within six months after Plaintiffs' claims were filed, pursuant to 28 U.S.C. §2675.
9. The settlement offer made by the appropriate Federal Agency, pursuant to 28 U.S.C. §2675, was insufficient to cover the Plaintiff's damages.

### **IV. SUMMARY**

10. On or about May 19, 2014, the Plaintiff, Robert Lee Valencia, was operating a 2000 Harley-Davidson motorcycle in a lawful manner while traveling northbound on the 300 block of South Quinn, in Beeville, Bee County, Texas. The Defendant's employee was traveling westbound on the 700 block of West Milam when he failed to yield the right of way and suddenly, violently, and without warning struck the Defendant, Robert Lee Valencia, with the left side of the 1987 Grumman mail delivery truck he was driving.

The Plaintiff, Robert Lee Valencia, was transported via ambulance to the emergency room, and the Defendant was cited for failure to yield the right of way. The Defendant's employee was at all times acting in the course and scope of his employment with the USA and the United States Postal Service.

**V. COUNT I – NEGLIGENCE**

11. Plaintiffs incorporate by reference herein all allegations set forth above.
12. On May 19, 2014, the Plaintiff was traveling in a 2000 Harley-Davidson motorcycle in a lawful manner while traveling northbound on the 300 block of South Quinn in Beeville, Texas.
13. The Defendant's employee was traveling westbound on the 700 block of West Milam.
14. At all times relevant hereto, the Defendant's employee was acting within the course and scope of his office and employment with Defendant, the USA, specifically as a member of the United States Postal Service.
15. The Defendant's employee, operated the vehicle in a negligent manner and violated the duty which he owed the Plaintiff to exercise ordinary care in the operation of the motor vehicle in one or more of the following respects:
  - a. in failing to keep a proper lookout or such lookout, which a person of ordinary prudence would have maintained under same or similar circumstances;
  - b. in failing to timely apply the brakes of the vehicle in order to avoid the collision in question;
  - c. in failing to turn the vehicle in an effort to avoid the collision in question;
  - d. in failing to sound horn to warn of imminent danger;
  - e. in failing to yield the right-of-way;

- f. in failing to pay proper attention while driving; and
16. Each of these acts and/or omissions of the Defendant's employee, whether taken singularly or in any combination, constitute negligence, which proximately caused the collision and injuries and other losses as specifically set forth herein, all of which the Plaintiff suffered and which the Plaintiff will continue to suffer in the future, if not for the remainder of his natural life.

#### **VI. COUNT V - GROSS NEGLIGENCE**

16. The Defendant's employee's negligent conduct was more than momentary thoughtlessness or inadvertence. Rather, his conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to the Plaintiff. The Defendant's employee had actual, subjective awareness of the risk involved but, nevertheless, proceeded in conscious indifference to the rights, safety, or welfare of the Plaintiff or others similarly situated.
17. Each of these acts and/or omissions, whether taken singularly or in any combination constitutes negligence and gross negligence which proximately caused the collision and injuries and other losses as specifically set forth herein, all of which the Plaintiff suffered and which the Plaintiff will continue to suffer in the future, if not for the remainder of his natural life.

#### **VII. DAMAGES**

18. As a direct and proximate result of the collision and the negligent conduct of the Defendant's employee, the Plaintiff suffered severe bodily injury to the neck, upper back, lower back, and other parts of his body generally. The injuries are permanent in nature and have had a serious effect on the Plaintiff's health and well-being. These specific injuries and their ill effects have, in turn, caused the Plaintiff's physical and mental

conditions to deteriorate generally, and the specific injuries and ill effects have caused and will, in all reasonable probability, cause the Plaintiff to suffer consequences and ill effects of this deterioration throughout his body for a long time in the future, if not for the balance of his natural life. As a further result of the nature and consequences of his injuries, the Plaintiff suffered great physical and mental pain, suffering and anguish and in all reasonable probability, will continue to suffer in this manner for a long time into the future, if not for the balance of his natural life.

19. As a further result of the injuries sustained by the Plaintiff, there is a reasonable probability that he will require further medical care and attention and will incur future reasonable and necessary expenses for his medical care and attention.
20. As a consequence of the injuries sustained by the Plaintiff, he has sustained physical impairment and/or disfigurement. In all reasonable probability, this disability will cause the Plaintiff to suffer long into the future, if not for the balance of his natural life.
21. Specifically, as a direct and proximate result of the negligent acts of the Defendant's employee, the Plaintiff has endured significant pain and suffering, mental anguish, and physical impairment as a result of the collision in question. The Plaintiff continues to seek treatment for the injuries he sustained in the collision.

#### **VIII. PRAYER FOR RELIEF**

22. WHEREFORE, Plaintiff is entitled to damages from the United States of America and he hereby prays that judgment be entered in his favor and against the United States of America as follows:
  1. Pain and suffering in the past;
  2. Pain and suffering in the future;
  3. Mental anguish in the past;

4. Mental anguish in the future;
5. Past medical expenses;
6. Future medical expenses;
7. Physical impairment in the past;
8. Physical impairment in the future;
9. Physical disfigurement in the past;
10. Physical disfigurement in the future;
11. Loss of past wages;
12. Loss of future wages;
13. Loss of wage earning capacity;
14. Loss of consortium
15. Property damage; and
16. Loss of use.

Plaintiff further seeks any further and additional relief at law or in equity that this Court may deem appropriate or proper.

Respectfully submitted,  
**THOMAS J. HENRY, INJURY ATTORNEYS**  
521 Starr Street  
Corpus Christi, Texas 78401  
Tel: (361) 985-0600  
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By: Mary Wilson

Thomas J. Henry  
Federal Admission No.: 12980  
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Mary Wilson  
State Bar No. 21704570  
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**Attorneys for Plaintiffs**  
\*Service by e-mail to this address only

JS 44 (Rev. 12/12)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Robert Lee Valencia

## DEFENDANTS

United States Postal Service

(b) County of Residence of First Listed Plaintiff Bee County, Texas  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.(c) Attorneys (Firm Name, Address, and Telephone Number)  
Mary Wilson, Thomas J. Henry Injury Attorneys  
521 Starr Street  
Corpus Christi, TX 78401

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- |                                                                 |                                                                                    |
|-----------------------------------------------------------------|------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1 U.S. Government Plaintiff            | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)          |
| <input checked="" type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	PTF	DEF	
<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	CIVIL RIGHTS	PRISONER PETITIONS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability			<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability			<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice		<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 861 HIA (1395f)	
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 862 Black Lung (923)	
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<b>Habeas Corpus:</b>		<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee			<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence			<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General			<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty Other:			<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 555 Prison Condition			
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			
<b>IMMIGRATION</b>					
			<input type="checkbox"/> 462 Naturalization Application		
			<input type="checkbox"/> 465 Other Immigration Actions		

## V. ORIGIN (Place an "X" in One Box Only)

- |                                                           |                                                     |                                                          |                                                   |                                                                              |                                                     |
|-----------------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------------------------|-----------------------------------------------------|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation |
|-----------------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------------------------|-----------------------------------------------------|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Federal Torts Claims Act, 28USC, Section 2671, Section 1346

## VI. CAUSE OF ACTION

Brief description of cause:  
Loss of property and personal injury in motor vehicle accident

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

## DEMAND \$

754,500.00

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S)

(See instructions):

IF ANY

JUDGE

DOCKET NUMBER

DATE 2/19/16

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFF

JUDGE

MAG. JUDGE